

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of:

Scott Stephen Roth
System ID No. 0332013

Enforcement Case No. 08-6924

Respondent
_____ /

Issued and entered
on February 19 2009
by Stephen R. Hilker
Chief Deputy Commissioner

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FEB 18 2009

CONSENT ORDER AND STIPULATION

OFIR/OGC

A. FINDINGS OF FACT AND CONCLUSIONS OF LAW

It is alleged that the following statements are true and correct:

1. At all pertinent times, Scott S. Roth, ("Roth") was a resident insurance producer, System ID No. 0332013 licensed to sell, solicit and/or negotiate insurance in the State of Michigan with qualifications in accident and health, life and variable annuities.
2. As a licensed insurance producer, Respondent Roth knew or had reason to know that Section 1207(1) of the Michigan Insurance Code ("Code") requires: "An agent to be a fiduciary for all money received or held by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility."
3. As a licensed insurance producer, Respondent Roth further knew or had reason to know that Section 1239(1)(h) of the Code, allows the Commissioner to place on probation, suspend, or revoke an insurance producer's license or levy a civil fine under Section 1244 of the Code for using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.
4. As a licensed insurance producer, Respondent Roth further knew or had reason to know that Section 2005(a) of the Code, provides that an unfair method of competition and an

unfair or deceptive act or practice in the business of insurance means the making, issuing, circulating, or causing to be made, issued, or circulated, an estimate, illustration, circular, statement, sales presentation, or comparison which by omission of a material fact or incorrect statement of a material fact that misrepresents the terms, benefits, advantages, or conditions of an insurance policy.

5. As a licensed insurance producer, Respondent Roth further knew or had reason to know that Section 2018 of the Code, provides that an unfair method of competition and an unfair or deceptive act or practice in the business of insurance include making false or fraudulent statements or representations on or relative to an application for an insurance policy for the purpose of obtaining a fee, commission, money, or other benefit from an insurer, agent, broker, or individual.
6. As a licensed insurance producer, Respondent Roth further knew or had reason to know that Section 2028 of the Code, provides that upon probable cause, the commissioner shall have power to examine and investigate into the affairs of a person engaged in the business of insurance in this state to determine whether the person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by sections 2001 to 2050.

COUNT I

7. The Office of Financial and Insurance Regulation (OFIR) received a complaint from James P. DiVasto, Agency Assistant for Knights of Columbus (Complainant), on July 10, 2008. Complainant alleges Respondent collected premium on applications for annuities of which only a portion was remitted to the carrier.
8. On or about May 11, 2007, Respondent met with [REDACTED] and collected [REDACTED] for insurance.
9. On or about June 11, 2007, Complainant received an annuity application for [REDACTED] showing a paid amount of [REDACTED]. [REDACTED] asserts he never saw or signed this application.
10. On or about June 22, 2007, Complainant received an annuity application for [REDACTED] showing a paid amount of [REDACTED]. [REDACTED] asserts he never saw or signed this application.
11. On or about June 27, 2007, Complainant received an annuity application for [REDACTED] showing a paid amount of [REDACTED]. [REDACTED] asserts he never saw or signed this application.
12. In addition to the applications, multiple other documents were submitted to Complainant with [REDACTED] signature. [REDACTED] asserts he never saw or signed these documents.

13. On Monday June 9, 2008, [REDACTED] called Brian Barlow, General Agent for Complainant with concerns about an annuity. [REDACTED] stated the policy should be [REDACTED] but his statement said it was only [REDACTED] Mr. Barlow met with [REDACTED] on Thursday June 12, 2008. At that meeting Mr. Barlow received copies of the policies [REDACTED] had in his possession.
14. The policies in [REDACTED] possession were as follows:
 - a. Contract number [REDACTED] issued June 1, 2007 - [REDACTED] single premium payment.
 - b. Contract number [REDACTED] issued June 18, 2007 - [REDACTED] single premium payment.
 - c. Contract number [REDACTED] issued June 21, 2007 - [REDACTED] single premium payment.
15. Complainant is in the process of making [REDACTED] whole by providing him with one annuity reflecting a deposit of [REDACTED] with an interest start date of June 1, 2007.
16. Based upon the above actions, Respondent has committed acts that are grounds for the Commissioner ordering payment of a civil fine, refund of any overcharges, restitution be made to insureds to cover losses, damages or other harm attributed to Respondent's violation of the Code, and/or licensing sanctions under Section 1239, 1244, 2064, and 2069 of the Code for the Respondent violating Section 1207(1), 1239(1)(h), 2005(a), and 2018 of the Code.

COUNT II

17. On or about May 5, 2008, OFIR received a complaint from James P. DiVasto, Agency Assistant for Knights of Columbus (Complainant). Complainant alleges Respondent affixed the signature of the policyholder to insurance documents remitted to the Complaint.
18. On March 7, 2007, Respondent met with [REDACTED]
19. On June 6, 2007, Complainant received a request for the dividends from policy [REDACTED] to be used to pay the premium for policy number [REDACTED] [REDACTED] asserts that the signature on the request is not hers.
20. On June 11, 2007, Complainant received a request for a policy loan against policy [REDACTED] in the amount of [REDACTED] to pay the premiums for policy number [REDACTED] [REDACTED] asserts that the signature on the request is not hers.
21. Complainant's review concluded that the signatures on documents requesting the loan or dividends from the policy be used to pay premiums were not [REDACTED] signatures.
22. Complainant has made [REDACTED] whole.

23. Based upon the above actions, Respondent has committed acts that are grounds for the Commissioner ordering payment of a civil fine, refund of any overcharges, restitution be made to insureds to cover losses, damages or other harm attributed to Respondent's violation of the Code, and/or licensing sanctions under Section 1239 and 1244 of the Code for the Respondent violating Section 1239(1)(h) of the Code.

B. ORDER

Based on the findings of fact and conclusions of law above and Respondent's stipulation, it is ORDERED that:

1. Respondent shall immediately cease and desist from operating in such a manner as to violate with Section 1207(1), 1239(1)(h), 2005(a), and 2018 of the Code, MCL 500.1207(1), 500.1239(1)(h), 500.2005(a), and 500.2018.
2. Respondent's insurance producer license and authority are hereby **REVOKED**.

OFFICE OF FINANCIAL AND
INSURANCE REGULATION

By: _____


Stephen R. Hilker
Chief Deputy Commissioner

C. STIPULATION

I have read and understand the consent order above. I agree that the Commissioner has jurisdiction and authority to issue this consent order pursuant to the Insurance Code. I waive the right to a hearing in this matter if this consent order is issued. I understand that this stipulation and consent order will be presented to the Commissioner for approval and the Commissioner may or may not issue this consent order. I waive any objection to the Commissioner deciding this case following a hearing in the event the consent order is not approved. I admit the facts set forth in the above consent order and agree to the entry of this order.

The OFIR staff approves this stipulation and recommends that the Commissioner issue the above Consent Order.

William R. Peattie
William R. Peattie

Dated: 2/18/09